should be careful not to assume that what happened in Corinth also occurred in Athens, the pinax is an indication that such ithyphallic figurines were used by craftsmen in the Greek world long before Aristophanes' day.

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APPROPRIATION AND REVERSAL AS A BASIS
FOR ORATORICAL PROOF

The central theme of Cicero's *Pro Roscio Amerino* is the opposition between urban and rural. The defendant is purportedly a rustic in the best Roman tradition, and so a morally upright man. The prosecution, he claims, is made up of urban cutthroats and wastrels, and they, not the defendant, were responsible for the murder of Roscius' father (e.g., *Rosc. Am.* 39, 88, 94, 152). This opposition between urban and rural had been invoked by the prosecution, apparently in an attempt to portray Roscius as a wild half-man cut off from civilization (*Rosc. Am.* 74 "hunc hominem ferum atque agrestem fuisse, numquam cum homine quoquam conlocutum esse"; cf. §§39, 94). This was a traditional stereotype,[1] but Cicero, accepting the claim that Roscius is a rustic, uses a different traditional stereotype—the earnest and honorable young farmer of New Comedy.[2] On this understanding of his character, Roscius must be innocent.

Such appropriation and reversal of the opponent's argument is a common tactic in Cicero's orations. Yet it is not discussed in his rhetorical works and only glanced at in Quintilian's handbook.[3] This gap between theory and practice can be explained by the interaction of this strategy with existing rhetorical categories. The strategy falls between these categories and is lost. Nonetheless, even without explicit precepts, the strategy of appropriation is encouraged by the basic structure of rhetorical invention: both sides draw arguments from a relatively small pool (a process I will term "schematization"), and so are forced into this kind of direct confrontation. Nor is the use of this strategy motivated only by formal factors internal to rhetorical theory. There are also practical considerations relating to the creation and verification of knowledge in the courtroom setting. Formal and epistemological considerations converge to make appropriation an attractive strategy in Roman oratory.

Cicero uses appropriation not once, but twice in *Pro Roscio*. (Here, as in what follows, I use "appropriation" as shorthand for "appropriation and reversal.") In addition to the argument about rustic character, Cicero also appropriates a subsidiary prosecution argument about motive. The prosecution had argued that Roscius' father had relegated him to the family's country estates to show disfavor, while retaining his other son with him in Rome (*Rosc. Am.* 42),[4] so Roscius had his father killed to avoid the risk of being disinherited (*Rosc. Am.* 53). Cicero counters that to be put in charge

1. See Ann Vasaly, *Representations: Images of the World in Ciceronian Oratory* (Berkeley and Los Angeles, 1993), 158–60. Throughout I cite Vasaly's book rather than her similar, but somewhat briefer treatment in "The Masks of Rhetoric. Cicero's *Pro Roscio Amerino*," *Rhetorica* 2 (1985): 1–20.
2. See Vasaly, *Representations*, 160–61 and especially *Rosc. Am.* 46–47.
3. The tactic is used in *De Oratore* 1.55 (cf. 1.43), but without comment there or elsewhere. Nor is it systematically discussed in the modern literature; cf. n. 19 below.
4. Of course none of this assumes that Cicero gives a "fair" presentation of the other side's views, but he will have had to base his appropriation on what they said. (I will make the sense of "base on" more specific

of rural properties was, both in this particular case and in Roman tradition generally, a mark of favor (*Rosc. Am.* 43–49). Hence Roscius had no motive for the crime. On the contrary, his so-called "relegation" proved his good relationship with his father.

A similar appropriation is found in *Pro Caelio*. Early in the speech Cicero responds to a series of attacks on Caelius' character (*Cael.* 6–22). Caelius is accused not only on ethical grounds (e.g., *Cael.* 6–9 *impudicitia, Cael.* 17 *aes alienum* and *sumptus*), but because of a purported connection to Catiline (*Cael.* 10–16). The profligacy of which Caelius is accused is characteristic of representations of Catiline's followers (e.g., *Cat.* 2.18–23, Sall. *Cat.* 14). One of the specific ethical charges is that Caelius no longer lives with his father (*Cael.* 18 *semigrarit*). The objection here can scarcely be that he has been ejected, but that he has fled his father's rightful authority in order to pursue his own pleasures (*Cael.* 3 "Obiectus est pater . . . quod . . . parum pie tractatus a filio diceretur"). Cicero counters that the move actually signifies the reverse. Caelius had attempted to use the fame of a successful prosecution to gain public office. He rented his new domicile (at his father's direction; *Cael.* 18 *suadente*) to be closer to the forum so that "facilius et nostras [elite Romans'] domos obire et ipse a suis [Caelius' supporters] coli posset." In other words, he moved so as to participate in the traditional, respectable political activity that is the precise opposite of *vis*, the charge brought against him. Caelius' change of residence shows his respect for the orthodox behavior required by Roman society.

Next we may turn to a pair of passages in which Cicero defends the propriety of his appearing for the defense. At *Pro Sulla* 48 Cicero reports the prosecutor's objection that he, the man who had suppressed the Catilinarian conspiracy, ought not defend a (purported) coconspirator. Cicero replies that there is no more appropriate defender: "Immo nemo magis [defendere debet] eum de quo nihil umquam est suspicatus quam is qui de aliis multa cognovit" (*Sull.* 48). In the previous year, in *Pro Murena*, Cicero had replied to Cato's complaint that as consul (among other things) he ought not to be defending Murena (*Mur.* 3). The precise point is not clear, but it probably involves the same abuse of *auctoritas* of which Cicero goes on to accuse Cato (*Mur.* 58–60, cf. *Sull.* 21–27, 48).[5] That is, a (potentially) innocent citizen ought not be unduly endangered by the personal influence of a too august prosecutor. Cicero suggests that in taking up the role of *defensor periculi* [*Murenae*], he will also be *auctor benefici populi Romani* (*Mur.* 3).[6] If this defense is a public benefit, it is not merely Cicero's right *qua* consul to defend Murena, but his duty.[7] In both

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below.) Otherwise, the device seems to lose its point. In fact, it would reduce Cicero's own credibility if he attributed totally alien material to them. This is confirmed, in my opinion, by the fact that in most cases we can reconstruct a plausible reason for the opposition to advance the considerations of which Cicero takes advantage.

5. It is conceivable that the original objection had more to do with the necessity of a consul's maintaining an irreproachable moral standard, and thus was closely related to the following objection that the proposer of a law on *ambitus* ought not to defend someone on that charge. But such an objection would amount to the claim that a consul (or any other magistrate) would be tainted by conducting a criminal defense, and there is very little evidence for that claim anywhere else (but cf. Pliny *Ep.*1.23).

6. Of course we soon learn (*Mur.* 4) that the benefit consists in ensuring that there will be two consuls to defend against Catiline.

7. By contrast, in *Mur.* 4–6 Cicero responds to two further objections: that as proposer of a law on *ambitus* he ought not to defend someone on that charge, and that as the harsh suppressor of the conspiracy, he ought not to ask for leniency for anyone else. In that speech Cicero merely replies that these considerations are irrelevant to the present case, instead of transvaluing them.

speeches Cicero shifts the ground of the appropriated argument. In *Pro Sulla* he responds to a strictly ethical argument (propriety of his defense) in largely pragmatic terms (access to evidence). In *Pro Murena* he seems to redefine the ethics of the issue in terms of ends, instead of means.

There is also another appropriation slightly later in *Pro Murena.* Cicero conducts the *contentio dignitatis* of this speech by reviewing in parallel the careers of Murena and of his competitor and prosecutor, Ser. Sulpicius Rufus. Between their quaestorian and praetorian years Sulpicius, a jurisconsult, remained in Rome while Murena served as a legate to L. Lucullus in the Mithridatic War. The prosecution claimed that Murena's long absence from the forum (and so, presumably, from the notice of the voters) would have harmed his subsequent electoral prospects (*Mur.* 21). Cicero replies that it was rather Sulpicius who was harmed by the *fastidium* and *satietas* his constant presence had created in the populace. This reversal is particularly noteworthy because the prosecution argument here is precisely the one that Cicero would later make in defense of Cn. Plancius (*Planc.* 64–67).[8] Amusingly, Cicero supports both claims by reference to his own electoral experience (*Mur.* 21, *Planc.* 66). In both cases Cicero aligns himself with the prosecutor to relate his own (Cicero's) failings in the form of friendly, if somewhat patronizing, advice[9]—advice designed to reveal that the prosecutor's supposed electoral advantages were actually disadvantages.

Nor is the tactic of appropriation limited to the judicial speeches; Catiline and Antony also fall victim to it. Before solid evidence of his conspiracy had been produced, Catiline had offered, apparently as a show of good faith, to place himself in the custody of Lepidus or either of two Metelli or even Cicero himself (*Cat.* 1.19). Cicero proceeds to argue that this offer is a virtual confession of guilt (*Cat.* 1.19): "Sed quam longe videtur a carcere atque a vinculis abesse debere qui se ipse iam dignum custodia iudicarit?" If a man convicts himself, a jury must surely reach the same conclusion. Thus, Cicero maintains, if Catiline is willing to face actual punishment, he ought certainly to be willing to go into exile (as Cicero has been demanding). Hence Catiline's offer should not dispel suspicion (*vitandae suspicionis causa*), but attract it.

Cicero begins his *Second Philippic* by defending himself against Antony's accusation that Cicero had breached the *amicitia* between them (*Phil.* 2.3 "de amicitia quam a me violatam esse criminatus"). Among the subordinate accusations (*Phil.* 2.7–9) is the claim that Cicero had sent him friendly letters (§9): "Quod enim verbum in istis litteris est non plenum humanitatis, offici, benevolentiae?" Presumably Antony's objection is that the orator had sent friendly letters that hypocritically concealed his hatred for their recipient. Cicero replies that these letters, far from constituting treachery, are a benefit he has bestowed on Antony (*Phil.* 2.9): "Omne autem crimen tuum est quod de te in his litteris non male existimem, quod scribam tamquam ad civem, tamquam ad bonum virum, non tamquam ad sceleratum et latronem." Since Antony is a bad citizen and human being and so deserves no praise

8. The argument in *Pro Plancio* can itself be read as a reversal based on the prosecution's claims about the achievements of Laterensis after his quaestorship, "[Laterensem] Cyrenis liberalem in publicanos, iustum in socios fuisse" (*Planc.* 63; for dating see Friedrich Münzer, "Iuventus [16]," *RE* 10.2 [1919]: 1366). The prosecution's original claim had little to do with place, however; Cicero picks up on the single word *Cyrenis.*

9. On the strategy in which the orator aligns himself with the prosecutor, see C. P. Craig, "The *Accusator* as *Amicus:* An Original Roman Tactic of Ethical Argumentation," *TAPA* 111 (1981): 31–37, esp. 32–33, 35.

from Cicero in any context, the fact that Cicero wrote these letters is taken by the
"prosecution" as a sign of bad faith; Cicero replies that it is in fact more of a
beneficium than Antony deserved.[10]

Of the several other examples, I offer extended discussion of only two more. The
first speech (like *Pro Roscio*) is largely structured around a single appropriation: the
bulk of *Pro Milone*, as we have it, argues that the final fight between Milo's gang
and Clodius', in which Clodius was killed, began when Clodius ambushed Milo.[11]
The argument is based on the apparently false dilemma that one side or the other
staged an ambush: "Insidias factas esse constat, et id est quod senatus contra rem
publicam factum iudicavit; ab utro factae sint incertum est. De hoc igitur latum est
ut quaereretur. . . . Num quid igitur aliud in iudicium venit nisi uter utri insidias fe-
cerit?" False dilemma is not uncommon in Cicero's speeches,[12] but in this case there
is some attempt at justification. Cicero's *constat* suggests the agreement of the pros-
ecution, and this is confirmed by Asconius' report of the trial.[13] Since the opposition
had granted the premise that there had been an ambush, Cicero can argue on the ba-
sis of probability that Clodius was responsible. Justification for the false dilemma
is particularly useful in this case. Cicero is trying to argue self-defense in a fight be-
tween two known enemies.[14] To do so successfully, it is crucial to establish actual
guilt on the other side.

In *Divinatio in Caecilium* Cicero argues the opposite side of a claim later ad-
vanced in *Pro Sulla* (discussed above): the argument over the fitness of an interested
magistrate to plead a case. In doing so Cicero anticipates and "appropriates" an ar-
gument that the opposition had not yet made (cf. Quint. 5.13.18).[15] Caecilius would
supposedly argue that he ought to be allowed to prosecute Verres since he had been
Verres' quaestor (*Div. Caec.* 59). This claim could have been supported on two
grounds: Caecilius' familiarity with the evidence (as Cicero asserted in *Pro Sulla*),
and his compelling motive to prosecute vigorously, i.e., Verres' alleged violation of
the praetor/quaestor relationship.[16] Cicero responds that precisely because of this
quaestorship Caecilius is disqualified from prosecution. No matter what his other
qualifications might be, he is tied too closely to the defendant (*Div. Caec.* 59–65,

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10. The letters were read aloud by Antony (*Phil.* 2.7) and acknowledged by Cicero (*Phil.* 2.9).

11. Asconius 41.18C claims that this is the sole argument of the original speech.

12. See C. P. Craig, *Form as Argument in Cicero's Speeches: A Study of Dilemma* (Atlanta, 1993), 172,
under his A.2 for a list of many examples.

13. Asc. 41.14–18C "Itaque cum insidias Milonem Clodio fecisse posuissent accusatores, quia falsum
id erat—nam forte illa rixa commissa fuerat—Cicero apprehendit et contra Clodium Miloni fecisse insid-
ias disputavit, eoque tota oratio eius." It is not impossible that Asconius' report is here dependent on Cic-
ero's text, but he clearly had access to (and interest in) a variety of materials no longer extant, and
speeches of Cicero's opponents (at least in notable trials) apparently survived even beyond his own day
(Quint. 10.1.23).

14. The reason for Cicero's insistence on a plea of self-defense (cf. Asc. 41.9–14C) is a matter of some
speculation; see A. W. Lintott, "Cicero and Milo," *JRS* 64 (1974): 61–78; A. M. Stone, "*Pro Milone:* Cic-
ero's Second Thoughts," *Antichthon* 14 (1980): 88–111, esp. 91; and Mark Clark and James Reubel, "Phi-
losophy and Rhetoric in Cicero's *Pro Milone*," *RhM* 128 (1985): 57–72. We should also compare the
tendency in Cicero's murder trials (*Rosc. Am., Clu.*) to accuse the prosecution of the crime.

15. Roland Barthes noted the same strategy (preemptive appropriation) in Racine's *Phèdre,* albeit in
more abstract form (*Sur Racine* [Paris, 1960], 119).

16. While Cicero overstates the strength (and especially the religiosity) of the governor/quaestor rela-
tionship in this speech, L. A. Thompson, "The Relationship Between Provincial Quaestors and their Com-
manders-in-Chief," *Historia* 11 (1962): 339–55, makes it clear that the relationship ideally followed a
father/son model, and violating it could reasonably be construed as an offense against *pietas.*

cf. 46). As in *Pro Roscio* Cicero invokes Roman tradition to support his interpreta-
tion: "Sic enim a maioribus nostris accepimus praetorem quaestori suo parentis loco
esse oportere; nullam neque iustiorem neque graviorem causam necessitudinis
posse reperiri quam coniunctionem sortis, quam provinciae . . . " (*Div. Caec.* 61).
As was suggested above, Cicero in *Pro Sulla* shifted the prosecution's moral argu-
ment onto more pragmatic grounds; he claimed superior knowledge of the alleged
crime. To the extent that we imagine Caecilius similarly claiming superior knowl-
edge, Cicero not only takes the opposite view from that adopted in *Pro Sulla,* but
makes the opposite move: he seizes on a practical argument and makes it a moral
one.[17] In neither case, however, does he make the shift clear. In disputing Caecilius'
claim of a greater motivation to prosecute, Cicero appropriates not only the fact of
his quaestorship under Verres (obviously true, if not significant, in any case), but
also the moral value attributed to it.

In picking out these examples of the appropriative strategy, I have employed a
very narrow definition. The prosecution argues "X, therefore Y." Starting from the
same premise (not some independent Z) Cicero's response is not "X implies nothing
about Y," or even "X, therefore not Y," but "X, therefore the opposite of Y." Quin-
tilian (5.13.17) appears to touch on these and other possibilities when he remarks
"Sed tamen interim oratoris est efficere ut quid aut contrarium esse aut a causa di-
versum aut incrediblie aut supervacuum aut nostrae potius causae videatur esse con-
iunctum." Clearly the strategy was well established as a part of Cicero's repertoire.
Its high frequency may be emphasized by an illustration of how narrowly the "X,
therefore opposite of Y" definition of appropriation has been drawn. *Pro Milone* 15
provides an example of the "X and therefore not Y" case excluded by that definition.
Here the prosecution claimed that Pompey specified the murder of Clodius in his *lex
de vi,* and therefore that he had already judged Milo guilty. Cicero accepts the
premise that the murder was specified (and the implication that Pompey's opinion
matters), but concludes that Pompey meant to leave the question of Milo's guilt
open. Had Cicero used the strategy of appropriation and reversal in its narrow sense
(as in all the preceding examples), he would have concluded that Pompey's law ac-
tually implied Milo's innocence. The effect of these two formally different types is
quite similar, so the already numerous examples used here, based on the strictest
definition, can in a sense be seen as the tip of an iceberg.[18]

17. Wilfried Stroh, *Taxis und Taktik* (Stuttgart, 1975), 180, and Craig, *Form as Argument,* 62, claim that
Cicero distorts Caecilius' (potential) argument about the quaestorship by detaching the claim that he was
Verres' quaestor from the claim that he had subsequently been injured by Verres. While this argument from
motive may have been Caecilius' central point, the parallel to *Pro Sulla* suggests that he may well have in-
tended to claim greater knowledge of the evidence as well.

18. Two further examples: Milo's prosecutors apparently claimed that he killed Clodius to secure his po-
litical position (*Mil.* 34 *obstabat in spe consulatus Miloni Clodius*). But, Cicero objects, Milo's greatest
political asset was Clodius' opposition. As long as the people feared Clodius they would continue to support
and elect Milo. Now Milo would have to rely on more conventional (*Mil.* 34 *usitatis*) means to command
support. Hence: "Non modo igitur nihil prodest sed obest etiam mors Clodi" (*Mil.* 34). Personal political
advantage would have directed Milo to spare Clodius, not kill him. Here the shared assumption is that Milo
did (or did not) kill Clodius on the basis of deliberate, political calculation. In Sestius' trial the prosecutor
had referred to Cicero and his political allies as a *natio optimatium* (*Sest.* 96, 132). The force of this objec-
tion lies in the separatist implications of *natio* (cf. *OLD,* s.v. *natio* 2, 4). Cicero accepts the whole phrase
but emphasizes instead *optimatium* and its *opt-* root. On Cicero's tendentious definitions (*Sest.* 96, 97)
optimatium is a very general term, which eliminates the negative implications of *natio.* Presumably the
prosecutor used the term ironically, but in so doing he gave Cicero the opportunity to claim a monopoly on
virtue.

Despite the frequent use of the appropriative strategy, it is not discussed in Cicero's rhetorical works at all (contrast Quintilian quoted above).[19] Quintilian's account of the inartificial bases of argument (5.10.11–13) is much longer and more sophisticated than Cicero's standard list of laws, *praeiudicia,* testimony, etc. (*De Or.* 2.116).[20] The closest Cicero comes to recognizing appropriation explicitly is a brief remark at *De Inventione* 1.94, a catalog of faulty arguments that may be attacked in the *refutatio:* "Adversarium est [argumentum] quod ipsi causae aliqua ex parte officit."[21] Rohde's dissertation on Ciceronian *inventio* cites *Pro Sulla* 31 and *Divinatio in Caecilium* 61 (discussed above) as applications of this precept.[22] While these are clear cases of appropriation, it is not clear that they exemplify the point Cicero is making at *De Inventione* 1.94. The instance he gives there is the refutation of a general exhorting his troops who emphasizes the strength, number, or good fortune of the enemy. This does not involve the reinterpretation of the opposition's premises we have seen above. It is simply a matter of pointing out the concessions or failures already present in the opposition's speech.

It should be emphasized that the one clear mention of the appropriative strategy as such (Quint. 5.13.17) and the one possible reference (*Inv.* 1.94) are both contained in discussions of *refutatio,* not of *confirmatio.* Because of its inherently adversarial character, the strategy is presented as (if anything) a tactic of refutation. Contrast *Pro Milone* and *Pro Roscio Amerino* where it forms the basis for extensive positive argument. For this fact explains the late and weak appearance of the appropriative strategy in rhetorical theory. Since it crosses a conventional theoretical boundary, it is invisible to the rhetoricians.[23] Furthermore, it is classified as a technique of *inventio* within a particular section of the speech, whereas in practice Cicero can use it to direct the *dispositio* of a whole speech (as in *Rosc. Am.*).

It is tempting to look for an explanation of this strategy in a part of rhetorical theory to which it bears an obvious resemblance: the argument *in utramque partem,* that is, the very widespread rhetorical exercise of arguing both sides of a given case (e.g., *Inv.* 2.45, *De Or.* 1.263, *Orat.* 46).[24] However, training that relies on this exercise would not necessarily encourage the appropriative strategy. Rather both this kind of training and the actual use of appropriation (as well as the composition of *controversiae* and oratorical self-contradiction to be discussed below) take the forms they do because of more general characteristics of *inventio* in ancient rhetoric.

19. Nor, for that matter, is it much noted in modern works. Vasaly, *Representations,* 158, notes its appearance in *Pro Roscio,* but is concerned with other issues and so does not discuss the strategy as such.

20. Cicero's list is slightly more expansive than Aristotle's (*Rhet.* 1375a24–25; cf. 1355b37): laws, witnesses, contracts, torture, oaths.

21. There is a distant relative to be found in the humorous topic at *De Or.* 2.286 "Saepe etiam facete concedas adversario id ipsum, quod tibi ille detrahit." This, however, is reversal without appropriation. In Cicero's example Laelius replies to a humble man's accusations that he (Laelius) was not worthy of his ancestors: "At hercule . . . tu tuis dignus." The response gains a certain topicality from the opponent's claim, but it is hard to discern any proposition, explicit or implicit, that is derived from the opponent.

22. Franz Rohde, *Cicero, Quae de Inventione Praecepit, Quatenus Secutus Sit in Orationibus Generis Iudicalis* (Diss., Koenigsburg, 1903), 130.

23. George Kennedy ("The Rhetoric of Advocacy in Greece and Rome," *AJP* 89 [1968]: 419–36, esp. 436) has observed that ancient rhetorical theory lagged behind oratorical practice. The original observation is sound, and it is worthwhile to point out that the present discussion provides another example. However, "lag" is a description, not an explanation (especially when orator and rhetorician are the same person—Cicero). The argument here about categories points out one of the factors (there are doubtless others) that causes the phenomenon in question.

24. Vasaly, *Representations,* 187, makes this connection for *Rosc. Am.*

Arguing two sides of the same case does not logically entail using the same set of facts on both sides. Ordinarily there will be agreement on some points, but these need not be the points on which argument is based. Instead one might concentrate on highlighting certain facts and suppressing or discrediting others according to how well they fit with one's thesis. This is the central strategy adopted by academic debaters in America today, who carry enormous file boxes filled with "evidence" cards, i.e., alternative versions of the facts. And Cicero certainly did not accept responsibility for giving a complete and balanced account of the facts as he saw them. We need, then, to identify a factor common to *in utramque partem* argument and courtroom oratory that makes the appropriative strategy attractive. This is not to say that the two do not often go hand in hand; this is the basis of most declamation (one example: Sen. *Cont.* 1.2.12, 19, on luck and chastity). The point to be stressed here is that the appropriative strategy is a consequence not of the fact of arguing both sides, but of the specific way the exercise was carried out in classical antiquity.

The element common to appropriation and *in utramque partem* is what I will call the "schematizing" tendency of *inventio*. Ancient accounts of *inventio* ("brainstorming") such as Cicero *De Inventione* and Quintilian 3 (cf. 5.10) rely heavily on breaking the facts of a case down into traditional categories (e.g., time, place, manner, *cui bono*), each with a few fixed values (e.g., before, during, and after, rather than specific times). Reducing cases to these simplified terms (to schemata) makes them look similar no matter how different they may be in fact. For instance, when Cicero makes claims about what kind of career is good for a potential candidate for office in *Pro Murena* or *Pro Plancio,* he speaks simply in terms of presence in or absence from the city, saying nothing about the particular activities being carried out or even their specific location. This schematizing tendency is also discernible in the use of mutually contradictory arguments in different cases. Scholars have long noted that Cicero sometimes makes mutually opposing claims in different speeches, for example on the electoral (dis)advantage that comes from absence from Rome (*Planc.* 64–67 and *Mur.* 21), the patriotism or danger to the state of the Gracchi (*Leg. Agr.* 2.10 and *Cat.* 1.3–4, 4.4), the populist or elitist orientation of Scipio Africanus (Asc. *Corn.* 70C and Cic. *Har. Resp.* 24) or the evidentiary value of witnesses (e.g., *Cael.* 54 and *Scaur.* 16).[25] It is doubtful whether anyone would claim today that consistency between speeches was a desideratum for Cicero.[26] Nonetheless, the very frequency of this kind of contradiction suggests the use of preconceived categories (e.g., in or out of the city, patriots vs. tyrants, a restricted set of authoritative exemplary figures), as is directly attested in the last of the above cases (n. 25). Cicero's indifference to the facts can only produce contradictions if he discusses the same topic repeatedly.

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25. The value of various sorts of evidence (witnesses, documents, etc.) was of course the subject of a variety of rhetorical topoi pro and con (*Rhet. Her.* 2.9–14; Cic. *De Or.* 2.118–19, *Part. Or.* 49–51, *Top.* 73–78; Quint. 5.2–7). Many of these arguments do not strictly reverse each other in practice since the orator will often not make claims about an entire category ("documents are unreliable"), but about particular members of that category ("this document has been forged"). In these examples the conflict is one of fact.

26. *Clu.* 138–42 shows that such inconsistency could be embarrassing, though not necessarily fatal, if pointed out by the opposition. This was perhaps more of a problem for Cicero than for orators who published less.

The clearest traces of schematization, however, are to be found in the traditional topics (not arguments) of declamation.[27] I give three examples taken, more or less at random, from the collection of Seneca the Elder:

> SACERDOS CASTA E CASTIS, PURA E PURIS. Quaedam virgo a piratis capta venit; empta a le-none et prostituta est. Venientes ad se exorabat stipem. Militem qui ad se venerat cum exorare non posset, conluctantem et vim inferentem occidit. Accusata et absoluta et re-missa ad suos est. Petit sacerdotium.
> A PRIESTESS MUST BE CHASTE AND OF CHASTE [PARENTS], PURE AND OF PURE [PARENTS]. A vir-gin was captured by a pimp and made a prostitute. When men came to her, she asked for alms. When she failed to get alms from a soldier who came to her, he struggled with her and tried to use force; she killed him. She was accused, acquitted, and sent back to her family. She seeks a priesthood [*Contr.* 1.2.pr.].[28]

> RAPTA RAPTORIS AUT MORTEM AUT INDOTAS NUPTIAS OPTET. Una nocte quidam duas rapuit; altera mortem optat, altera nuptias.
> A GIRL WHO HAS BEEN RAPED MAY CHOOSE EITHER MARRIAGE TO HER RAVISHER WITHOUT A DOWRY OR HIS DEATH. On a single night a man raped two girls. One demands his death, the other marriage [1.5.pr.].

> Quidam filium accusavit parricidii. Aequis sententiis absolutum abdicat.
> A man accused his son of parricide. He was acquitted on an equal vote. He is disin-herited [3.2.pr.].

A student or an adult arguing both sides of these cases does not rely on the same set of facts *because* he is arguing both sides; he does so because there is a very limited set of facts available. Each case comes reduced to a minimum and often to the stan-dard categories of *inventio:* father and son, male and female (cf. 1.2.17), the brave man. Note for instance the way the two rapes in 1.2 are reduced for the sake of ar-gument to the same time ("a single night") even though some order must be as-sumed. *Cont.* 1.5 is unusual in that there is discussion of the factual situation (the woman's virginity). In contrast, modern mock trial relies on extensive and often conflicting testimony, even if not all that information is obviously "relevant" to the case at hand.

Even more striking are the recorded treatments of the various *suasoriae.* Many of these are loosely based on historical figures and historical situations, yet the de-claimers represented in Seneca's collection draw on a remarkably narrow version of history in their arguments.[29] Consider the treatment of Cicero in *Suasoriae* 6 and 7 ("Cicero debates whether to beg Antony's pardon" and "Antony promises to spare Cicero's life if he burns his writings").[30] Cicero's complex political biography is

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27. Although our extant declamations are (certainly) post-Ciceronian, and the term *declamatio* used of these exercises is (possibly) a product of Cicero's adulthood, the practices seem to go back at least to the time of his education. See S. F. Bonner, *Roman Declamation in the Late Republic and Early Empire* (Liv-erpool, 1949), 1–31, and Michael Winterbottom, "Cicero and the Silver Age," *Entretiens sur l'Antiquité Classique* 28 (1981): 237–74, esp. 254–56.

28. The translations are those of Michael Winterbottom's Loeb edition of the Elder Seneca (Cam-bridge, Mass., 1974).

29. What follows is also valid for the few historically situated (though not always very specifically or accurately) *controversiae:* 3.8, 4.2, 4.8, 6.5, 7.2 (related to Cicero), 8.2, 9.1, 9.2, 10.5.

30. For both the argument and the detail of this paragraph I am indebted to an unpublished paper by M. B. Roller, "*Color*-blindness: Cicero's Death and Declamatory Versions of History in the Early Empire" (Johns Hopkins).

reduced to a few paradigmatic events (e.g., the Catilinarian conspiracy, the conflict with Antony), and the man himself to an exemplar of one or two specific qualities (eloquence, republican virtue). As Quintilian describes it, "[I]d consecutus ut Cicero iam non hominis nomen sed eloquentiae habeatur" (10.1.12).[31] Only one declaimer (Varius Geminus; *Suas.* 6.11) actually ventured to give historically specific advice, naming regions of the empire where Cicero could count on support from particular friends and allies. After recounting this treatment, Seneca quotes Cassius Severus' judgment that "alios declamasse, Varium Geminum vivum consilium dedisse." In this rhetorical exercise, at least, the tendency is to reduce complex historical contingencies to sets of standard (often ethical) categories.[32] But, as before, we cannot here attribute schematization to the need to argue both sides of one case (in fact, Geminus was nearly the only speaker to declaim both sides of the earlier *suasoria; Suas.* 6.12). Rather it is due to the general tendencies of *inventio.* In the *controversia* the schematization is largely performed in the setting of the topic; in *suasoriae* (or real cases) the speaker reduces particulars to categories for himself.

The tendency to schematize has an important further consequence for actual courtroom oratory—it encourages the appropriative strategy. Neither the standard categories of rhetoric nor the standard values within those categories seem to vary much. For instance, Sulla's prosecutors assume (and Cicero does not really deny) that you are either for or against conspiracy; Sestius' accusers make a binary division between *populares* and *optimates.* Hence, for areas in which there is general agreement about the facts of the case, speakers will have little control over acceptable schematizations.[33] For instance, if there is to be a choice of "urban" or "rustic," Roscius must be the latter. Cicero must admit to being one of the *optimates.* Because of this restriction, it will be possible to anticipate the opposition's choices, or at least to narrow them down to a small set. As a result, for every argument like "the weaker would not attack the stronger," the orator will prepare a response like "the stronger would not attack the weaker because he would be the prime suspect."[34] This antithetical style is apparent as early as Antiphon's *Tetralogies* (e.g., 2.2.3, 6, 10; 2.3.8–9; 3.3.9, 10). Because schematization makes the "facts" of the case less distinctive, the orator relies more on his ability to make those facts tell in his favor than on presenting new ·evidence. Harold Gotoff has recently pointed out several passages in various orations of Cicero in which there is apparent improvisation by Cicero on the basis of actions

31. For other such remarks and more general discussion of the treatment of Cicero in the first century A.D., see Winterbottom, "Silver Age," 241–44.

32. On the extent and historical context of this process of "dehistoricization" see W. M. Bloomer, *Valerius Maximus and the Rhetoric of the New Nobility* (Chapel Hill, 1992), 11–58.

33. Of course they are free to emphasize different aspects of the schematization, as Asconius (41.22–24C) points out of the arguments from opportunity in Milo's trial in 52.

34. This particular example is a "reverse argument from probability" (Arist. *Rhet.* 1402a18–20, there attributed to Corax, one of the legendary discoverers of rhetoric), a form that is not common in Roman oratory. The general form of the argument claims the defendant would have anticipated the prosecutor's argument from probability and would therefore not have committed the crime. For the history of this argument see Michael Gagarin, "The Nature of Proofs in Antiphon," *CP* 85 (1990): 22–32, esp. 30. This form of appropriation can be applied against any argument from probability, and its universal applicability is obvious. The transparently mechanical nature of the argument reduces its value and thus the frequency of its use. By contrast, the other appropriations Cicero uses are much more specific to their respective circumstances. He changes the basis of evaluation from ethical to practical (or vice versa; *Sull., Div. Caec.*), appeals to Roman traditions (*Rosc., Div. Caec.*), or produces relevant *exempla* from his own life (*Planc.*). *Inventio* as described above will incline the orator to produce such appropriations, but it does not automatically create them for him.

taking place in the courtroom.[35] Yet, as Gotoff illustrates, Cicero has in each case engineered a situation (either by advance consultation or by his own speech) in which these actions are reasonably predictable. Hence his general line of argument is perhaps not improvisation after all. Schematization of argument is another, more general, factor that renders an opponent's argument more predictable and allows the orator a reasonable chance to prepare in advance a refutation or even an appropriation.

But the motivation for the appropriative strategy is not purely a matter of these formal features of contemporary rhetoric. Let us return to Roscius' case as an example. Roscius, scion of a wealthy family connected to the most noble clans at Rome, was scarcely the unsophisticated rustic both sides made him out to be.[36] Yet once the opposition has made the claim, Cicero takes it as a given and provides his own interpretation of its significance. Similarly in *Pro Sestio*, once the opposition has admitted that Cicero's allies are *optimates*, he can assume it is true and supply his own interpretation (see n. 18). While orators could try to establish bases for argument from testimony and/or documents, such a procedure ran a considerable built-in risk of refutation (see n. 25). Other bases were much more reliable. One such group includes basic ideological presuppositions, like the justice of Roman world conquest, the "natural" affection of parents and children, or the threat implicit in the existence of slaves.[37] Another set includes elements of the immediate environment, such as Pompey's troops in the forum during *Pro Milone*, Caesar's house in *Pro Rege Deiotaro*, or the *ludi Megalenses* that formed a backdrop for *Pro Caelio*.[38] But a third source was the opposition. The Roman courts were so highly adversarial that almost anything the two sides did agree on seemed credible to the jurors. As Quintilian suggests (5.10.12–13): "Pro certis autem habemus. . . . si quid inter utramque partem convenit, si quid probatum est, denique cuicumque adversarius non contradicit."[39]

But, one might ask, is Cicero really relying on the opposition for anything? That is, does the above argument require us to take at face value Cicero's claim to be reproducing the opposing argument and would the opposition really have given him such opportunities? At this point we must distinguish momentarily between the appropriation and the reversal. Cicero will have been largely constrained in the appropriation of claims about the outside world, but his reversals need have nothing to do with the opposition's use of the same facts. Quintilian (5.13.27) explicitly requires that in repeating an opponent's point, one must detach it from its original context. More specifically, what is being appropriated is not strictly an argument, but one or

35. "Oratory: the Art of Illusion," *HSCP* 95 (1993): 289–313, esp. 301–7.

36. See Adam Afzelius, "Zwei Episoden aus dem Leben Ciceros," *C&M* 5 (1942): 209–17, esp. 214 and Vasaly, *Representations*, 168–69.

37. Quint. 5.10.12–13 "Pro certis autem habemus . . . ea in quae communi opinione consensum est: 'deos esse,' 'praestandum pietatem parentibus.' "

38. Quint. 5.10.12 "Pro certis autem habemus primum quae sensibus percipiuntur, ut quae videmus audimus" (cf. Vasaly, *Representations*, 255–57).

39. Cf. Asconius 70.13–15C (speaking of an *exemplum*): "Non praeterire autem vos volo esse oratoriae calliditatis ius ut, cum opus est, eisdem rebus ab utraque parte vel a contrariis utantur." If valid the hypothesis presented here ought to hold for Greek oratory as well, since the rhetorical theory (or at least the oral tradition from which theory is eventually inferred) is largely the same and the trial situation similarly adversarial. In fact, a very cursory check of the corpus of Attic orators turned up several examples: Andoc. *Mys.* 137–39, Antiphon *Chor.* 17, Lys. 24.10–11. Cf. also the references to Antiphon's tetralogies above and the reversal of an "anticipated" argument at Isae. *Cleo.* 36–38.

more of its premises. To take a slightly different case, consider *Pro Caelio* 4 "Equitis autem Romani esse filium criminis loco poni ab accusatoribus neque his iudicantibus oportuit neque defendentibus nobis." It is reasonable to assume that the prosecution, addressing a largely equestrian jury, did not claim that equestrian status in itself was evidence of criminality. However, Cicero's argument would lack point if the prosecution had not commented somehow on equestrians; perhaps they were pointing out Caelius' over-zealous social climbing (by means of prosecution) to show that he was a dangerous man.[40] In any event there is no reason to doubt that the prosecution asserted both Caelius' equestrian birth and its relevance to the case. Cicero then invents a more specific (and largely fictive) relevance. To this extent it is imprecise to say that Cicero distorts the opposition's claims when he uses the appropriative strategy. Unlike the treatment of the prosecution in *Pro Caelio* 4, the appropriative strategy tends to ignore the opposing interpretation of the stipulated facts instead of distorting it. This procedure is highly selective; we have already seen that its results are also relatively predictable (because both sides rely on a shared tendency to schematize). On the one hand, Cicero does not need either foolish admissions (on the part of the opposition) or gross distortions (on his own) to make his counter-arguments. On the other hand, fabricating the content of a speech that the audience had just heard could easily backfire. We will never know for sure what Cicero's opponents in any case said, but there is no particular reason to doubt that Cicero had the skill to locate and appropriate the segments of their arguments that would be most useful to him.

My examples to this point have generally avoided cases where the "appropriated" fact is clearly common knowledge, e.g., the disagreement at *Orationes Philippicae* 2.11–14 over the moral value of Cicero's consulate; the shared premise that Cicero held the consulate and acted in certain ways at that time will have been known to all. For in such cases one could claim that the basis of the argument was preexisting consensus rather than the admission of the opposition. While these arguments might meet the formal definition of the appropriative strategy, their real basis cannot be conclusively demonstrated, and so only the formal motivation can be assumed. There were, however, a few apparent exceptions to the avoidance of these cases. These "exceptions" are examples where what is established by the appropriation is not so much a biographical or historical fact, but its relevance to the matter at hand.[41] Thus, Caecilius' quaestorship, Laterensis' time in Cyrene, or Roscius' place of residence would all have been undeniable. The fact that they had been stipulated by the opposition would not make them seem more probable; they were already certain. What the agreement of the two parties is used to prove is the relevance of these facts. When the relevance of a given fact is admitted, it removes one of the major weaknesses of arguments from probability, to which category belong all the Ciceronian arguments cited above. Some force must be allotted to what would otherwise seem tendentious conclusions from trivial facts. For instance, even a juror generally sympathetic to Cicero's representation of farmers and farming might not ordinarily

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40. Cf. R. G. Austin, ed. and comm., *Cicero: "Pro M. Caelio Oratio"*[3] (Cambridge, 1960), 46, 48.

41. In *Phil.* 2.11–14 even this is not the case; a man's tenure of a magistracy would have been clearly understood as relevant to his moral character.

be prepared to vote on the basis of that general tendency. But once the other side has admitted that the issue is important, then Cicero's interpretation (if believed) becomes not only true but decisive.

In this paper I have selected a number of examples of the strategy of appropriation and reversal of opposing arguments (or at least their premises) in the orations of Cicero. This strategy receives little notice in rhetorical theory (none at all in Cicero's *rhetorica*), at least in part because it crosses the boundaries of *argumentatio* and *refutatio*. Despite this lack of explicit prescription, the appropriative strategy is encouraged by the general hermeneutics imposed by formal rhetoric. The schematization of rhetorical *inventio* narrows the range of possible arguments, making them more predictable and thus more subject to this kind of refutation. And, in a highly adversarial system such as the Roman courts, agreement (or the semblance of agreement) between the parties provides a useful and specific source for bases of argument: it creates facts and establishes their relevance to the case at hand. So a number of features of both formal rhetoric and the courtroom situation silently but effectively conspire to encourage the use of the appropriative strategy.[42]

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VERGIL IN THE GRYNEAN GROVE:
TWO RIDDLES IN THE THIRD *ECLOGUE*

The poetic contest of *Eclogue* 3 between Damoetas and Menalcas ends with an exchange of riddles, at lines 104–7:

DAMOETAS: Dic quibus in terris (et eris mihi magnus Apollo)
             tris pateat caeli spatium non amplius ulnas.
MENALCAS: Dic quibus in terris inscripti nomina regum
             nascantur flores, et Phyllida solus habeto.

    "Tell me where—and you will be my great Apollo—
    the space of heaven extends not more than three ells."
    "Tell me where there grow flowers inscribed with the
    names of kings, and you alone will have Phyllis."

Efforts to solve these riddles seem to have begun with Vergil's contemporaries and have continued among modern scholars.

Each riddle has two components: a question (itself in two parts) and a prize. Both riddles begin with the question "where," *quibus in terris;* but that question cannot be answered until one identifies the "what." In the riddle of Damoetas, one must first